IN THE HIGH COURT OF BOMBAY AT GOA
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WRIT PETITION NO. 169 OF 2000

Shri Vassudev Tamba,
r/o H. No.117,
St. Inez, Panaji, Goa. ... Petitioner.

Versus

1. Shri S. T. Puttaraju,
Member Secretary,
Northern Planning &
Development Authority,
Archdiocese Bldg.,
lst Floor, Mala Link Rd.,
Panaji, Goa, and

2. The Goa Public Men's
Corruption (Investigation &
Inquiries) Commission,
Serra Building,
Near All India Radio,
Altinho, Panaji, Goa. ... Respondents.

Shri S. K. Kakodkar, Senior Advocate with Shri J. J. D'Souza, advocate for the petitioner.

Shri A.N.S. Nadkarni, Advocate General with Shri P. A. Kamat, Additional Government Advocate for respondent no.1.

Shri Noel Dias Sapeco, advocate for respondent no.2.

CORAM : SMT. NISHITA MHATRE &
P. V. HARDAS, JJ.

DATE OF RESERVING THE JUDGMENT : 21st January, 2004.

DATE OF PRONOUNCING THE JUDGMENT : 9th February, 2004.

JUDGMENT (Per Smt. Nishita Mhatre, J.)

The petitioner and his two brothers, Shripad and Raghurai Tamba, jointly own certain property in the State of Goa. On 3rd November, 1998, Shripad and Raghurai applied to the North Goa Planning and Development Authority (hereinafter referred to as "the NGPDA" for short), for permission to develop and extend their house in a commercial town. It appears that on 9th November, 1998, the two brothers informed

the NGPDA that the extension sought was temporary and they would not claim any equities and coverage based on the permission that may be granted to them. Permission was thereafter granted to the two brothers to extend their premises on 19th November, 1998. On 8th April, 1999, the petitioner lodged a complaint under the Goa Public Men's Corruption (Investigation and Inquiries) Act, 1988, (hereinafter referred to as "the Act of 1988" for brevity's sake), alleging that the respondent no.1 who was then the Secretary of the Planning Authority had prevailed upon the Planning Authority in utter violation of the Town Planning Act, to grant permission to Shripad and Raghurai to construct an extension to their house. According to the petitioner, respondent no.1 was guilty of favouritism and nepotism which are acts of corruption under the Act of 1988. A preliminary investigation was conducted and on 1st July, 1999, the Commission constituted under the Act of 1988 felt that a prima facie case exists against respondent no.1 and, therefore, decided that a detailed investigation was necessary. Accordingly, the Commission heard the matter in detail and decided the charges levelled against the respondent no.1. On 12th January, 2000, the Commission, which consists of the Chairman and two more members, by a majority decided that the allegations contained in the complaint were not substantiated and, therefore, the case was closed. However, there was a dissenting note by the Chairman of the Commission. The petitioner sought a review of the decision of the Commission on 17th February, 2000. The Commission declined to review its

order as a review was not maintainable under the Act. Aggrieved by the orders of the Commission, the petitioner has approached this Court under Articles 226 and 227 of the Constitution of India.

2. The main contention of the learned counsel appearing for the petitioner is that the findings of the Commission are perverse because of its faulty approach and bad logic and misdirection in law. The learned counsel submits that the first respondent misled the Planning Authority to believe that the permission sought by Shripad and Raghurai was temporary. According to the learned counsel, the first respondent who was the Municipal Secretary, misled the Planning Authority to believe that the representation made by him in respect of the permission was correct. The approach of the two members who had absolved the first respondent of all the charges, according to the learned counsel for the petitioner, is cavalier and, therefore, is required to be set aside. He submits that there is no doubt that the first respondent is guilty of corruption as he had wilfully intended to show undue favour in respect of Shripad and Raghurai. The learned counsel then submits that the findings in the majority decision are perverse and the approach which ought to have been adopted was the approach of the Chairman of the Commission and he, therefore, submits that the findings of the Commission be set aside with a direction to the competent authority to take action as respondent no.1 is guilty of corruption under Section 3(d) of the Act of 1988.

3. The learned Advocate General appearing for the State produced a Notification dated 16th November, 2003, and submitted that the Government had decided to wind up the Commission in the State and to establish the institution of Lokayukta. He submits that in view of this even if this Court comes to the conclusion that the Commission needs to reappreciate the evidence before it, the matter should not be remanded.

4. While exercising the writ jurisdiction of this Court, we are conscious that such exercise may be undertaken if there is an error of law or error of law apparent on the face of the record. Whether or not the impugned Order contains an error of law, or an error apparent on the fact of the record, must always depend on the facts and circumstances of each case and upon the nature and scope of the legal provisions alleged to have been misconstrued or contravened. Writ jurisdiction can also be exercised by this Court and findings of fact of an inferior Court or Tribunal can be set aside if there is no evidence at all to justify the findings or if the findings are so perverse that no reasonable person could possibly come to such a conclusion which the Court or inferior Tribunal had come to. The jurisdiction under Articles 226 and 227 of the Constitution of India is not meant to be exercised as an appellate jurisdiction over the findings recorded by a competent Tribunal. The jurisdiction of the High Court though supervisory, is not appellate. If on a mere perusal of the Order of an inferior Tribunal, the High Court

comes to conclusion that the Tribunal has committed a manifest error by misconstruing certain documents or has come the a conclusion which no reasonable person could, the Order may be set aside.

5. We have given our anxious consideration to the orders of the members of the Commission. We do not agree with the submission of the learned counsel for the petitioner that there has been a faulty approach or bad logic or misdirection in law by the members of the Commission, who have held that the first respondent was not guilty of the charges levelled against him under the Act of 1988. The findings of the Commission that the Member Secretary of the NGPDA, i.e. the first respondent has not given the approval for the extension to the two brothers on his own but has placed the entire matter before the Board cannot be lost sight of. It is obvious that the first respondent has prepared the note on which the Board acted. The Members Secretary of the NGPDA, i.e. the first respondent cannot take a policy decision as to whether extension should be permitted, on his own. The policy decision has to be taken by the Board. The local M.L.A. deposed before the Commission that the Board had thought it fit to grant the permission with the undertaking as given by the two brothers. The local M.L.A. has deposed that the first respondent could not on his own, decide the issue and grant permission to the two brothers to extend their construction. The official records and the minutes of the 59th meeting of the NGPDA in which the permission was granted,

were produced before the Commission. In fact, there is a noting of the first respondent that he had expressed reservations as to whether the permission ought to be granted. However, the authority decided to issue the permission based on the discussions at the meeting. The petitioner was represented by a counsel before the Commission. It appears that the local M.L.A. who was examined and whose evidence has been believed by the majority of the members of the Commission, has not been cross-examined to rebut the case of the petitioner that the first respondent did not at any point object to the permission sought by the two brothers. The majority of the members have accepted the evidence of the local M.L.A. and have found that since the entire Board of the NGPDA was responsible for granting permission, the Member Secretary could not be charged under the provisions of the Act of 1988.

6. We do not find this approach of the majority either cavalier or perverse. Their findings also cannot be said to be based on bad logic. There is no doubt that the first respondent could not, on his own, grant any such permission as was granted to the two brothers Shripad and Raghurai. Therefore, to consider that he was guilty of corruption as defined under the Act of 1988, would mean that the permission granted by the Board was granted in a perfunctory manner and without any application of mind. As stated in the evidence led before the Commission, the Member Secretary was only required to place before the Board the

documents and it was for the Board to grant or reject permission. The view taken by the majority of the members of the Commission is a possible view and, therefore, we see no justifiable reason to interfere with the same.

7. We do not find that the reasoning of the Commission is perverse or that its approach is faulty. The decisions relied on by the learned counsel for the petitioner in the case of **Syed Yakoob vs. K. S. Radhakrishnan & Ors.,** AIR 1964 SC 477, **Arjun Khiamal Makhijani vs. Jamnadas C. Tuliani & Ors.,** (1989) 4 SCC 612, **Shama Prashant Raje vs. Ganpatrao & Ors.,** (2000) 7 SCC 522, **Estralla Rubber vs. Dass Estate (P) Ltd.,** (2001) 8 SCC 97, are restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice. It cannot be gainsaid that in such cases the High Court while exercising jurisdiction under Articles 226 and 227 of the Constitution will interfere. However, it is trite law that the High Court while acting under these Articles cannot exercise its power as an Appellate Court or substitute its own judgment in place of the subordinate Court merely because a different view is possible. We do not find that there was no evidence on record or that no reasonable person could come to the conclusion which the Commission has, specially since the decision for granting or rejecting the permission was to be taken by the NGPDA itself.

8. Petition dismissed. Rule discharged. No order as to costs.

SMT. NISHITA MHATRE, J.

P. V. HARDAS, J.

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